

COMMONWEALTH OF KENTUCKY
KENTON CIRCUIT COURT

CIVIL ACTION NO. 13 CI 1846

31d

CITY OF COVINGTON, KENTUCKY
638 MADISON AVENUE
COVINGTON, KENTUCKY 41011

PLAINTIFF

VS.

ROBERT JAMES DUE

SERVE: 5125 DANA HARVEY LANE
INDEPENDENCE, KY 41051-8146

AND

JANET H. PATTERSON

SERVE: 5125 DANA HARVEY LANE
INDEPENDENCE, KY 41051-8146

AND

JOSEPH DECOSIMO AND COMPANY, LLC
DBA DECOSIMO CERTIFIED PUBLIC
ACCOUNTANTS

SERVE: JOSEPH DECOSIMO AND
COMPANY, LLC
225 EAST FIFTH STREET
SUITE 2200
CINCINNATI, OHIO 45202

SERVE: JOSEPH DECOSIMO AND
COMPANY, LLC
201 EAST FIFTH STREET
SUITE 2100
CINCINNATI, OHIO 45202

SERVE: KENTUCKY SECRETARY OF STATE
700 CAPITAL AVE., STE. 152
FRANKFORT, KY 40601

AND

VON LEHMAN & COMPANY INC.

SERVE: TED J. FUNK
250 GRANDVIEW DRIVE
SUITE 300
FORT MITCHELL, KY 41017

AND

U.S. BANKCORP INVESTMENTS, INC.

SERVE: C T CORPORATION SYSTEM
306 W MAIN ST
SUITE 512
FRANKFORT, KY 40601

AND

FIFTH THIRD BANK, INC.

SERVE: CSC-LAWYERS INCORPORATING
SERVICE COMPANY
421 WEST MAIN ST
FRANKFORT, KY 40601

AND

KVS INFORMATION SYSTEMS, INC.
821 MAPLE ROAD
WILLIAMSVILLE, NY 14221

SERVE: CSC LAWYERS INCORPORATING
SERVICE COMPANY
421 W MAIN STREET
FRANKFORT, KY 40601

AND

CHAS H. BILZ INSURANCE AGENCY, INC.

SERVE: CHARLES M. BERGER
412 MADISON AVENUE
COVINGTON, KY 41011

AND

KENTUCKY RETIREMENT SYSTEMS,
BOARD OF TRUSTEES
1260 LOUISVILLE RD
FRANKFORT, KY 40601

SERVE: WILLIAM A. THIELEN,
EXECUTIVE DIRECTOR
1260 LOUISVILLE RD
FRANKFORT, KY 40601

AND

KENTUCKY COUNTY EMPLOYEES
RETIREMENT SYSTEMS (CERS)
KENTUCKY RETIREMENT SYSTEMS
BOARD OF TRUSTEES
1260 LOUISVILLE RD
FRANKFORT, KY 40601

SERVE: WILLIAM A. THIELEN,
EXECUTIVE DIRECTOR
1260 LOUISVILLE RD
FRANKFORT, KY 40601

AND

ESTATE OF VIRGINIA MOLIQUE,
DECEASED
UNKNOWN ADMINISTRATOR
KENTON COUNTY, KENTUCKY

SERVE: UNKNOWN ADMINISTRATOR

SERVE: WARNING ORDER ATTORNEY

AND

JOHN DOE 1,
UNKNOWN SON OF BOB DUE
AND/OR JANET PATTERSON

AND

JOHN DOE 2,
UNKNOWN SON OF BOB DUE
AND/OR JANET PATTERSON

AND

JOHN DOE 3,
UNKNOWN SON OF BOB DUE
AND/OR JANET PATTERSON

AND

JANE DOE 1,
UNKNOWN DAUGHTER OF BOB DUE
AND/OR JANET PATTERSON

AND

JANE DOE 2,
UNKNOWN DAUGHTER OF BOB DUE
AND/OR JANET PATTERSON

AND

JANE DOE 3,
UNKNOWN DAUGHTER OF BOB DUE
AND/OR JANET PATTERSON

AND

UNIDENTIFIED FINANCIAL INSTITUTION 1,

AND

UNIDENTIFIED FINANCIAL INSTITUTION 2,

DEFENDANTS.

VERIFIED COMPLAINT WITH JURY DEMAND

Plaintiff, City of Covington, Kentucky, by and through its City Manager Larry Klein and for its Verified Complaint With Jury Demand; Complaint For Temporary and Permanent Injunction; and Complaint for Temporary and Permanent Restraining Order, states as follows:

INTRODUCTION

The City of Covington, Kentucky ("Plaintiff Covington"), a "second-class city" as classified in KRS 81.010, located in Kenton County, Kentucky, existing under the laws of the Commonwealth of Kentucky, and whose municipal office is located at 638

Madison Avenue, Covington, Kentucky, 41011, brings this action to recoup funds and monies which have been illegally and improperly diverted through the illegal and unauthorized actions of Robert J. Due (“Defendant Due”). Defendant Due, while serving as Plaintiff Covington’s Finance Director, intentionally and recklessly misdirected proceeds, monies and assets belonging to Plaintiff Covington through the embezzlement, theft, fraud, conversion and unauthorized negotiation of checks, drafts and other financial instruments, which he deposited into his personal accounts and the accounts of family members.

Defendants Janet H. Patterson (“Defendant Patterson”), John Does 1 through 3 and Jane Does 1 through 3 (“Defendant Children”), Joseph Decosimo and Company, LLC dba Decosimo Certified Public Accountants (“Defendant Decosimo”), Von Lehman & Company, Inc. (“Defendant Von Lehman”), US Bancorp Investments, Inc. (“Defendant US Bank”), and Fifth Third Bank (“Defendant Fifth Third”) knew or should have known that the various accounts, funds, and other assets acquired by Defendant Due, and which are the subject matter of this Verified Complaint, were funded and/or purchased through illegally embezzled and converted funds. Prior to her death on or about September 20, 2012, Ms. Virginia Molique knew or should have known that the various accounts, funds, and other assets acquired by Defendant Due, and which are the subject matter of this Verified Complaint, were funded and/or purchased through illegally embezzled and converted funds, and such knowledge is attributed to Defendant Estate of Virginia Molique (“Defendant Estate”).

Defendant KVS Information Systems, Inc. (“Defendant KVS Systems”) was the information system technology vendor that marketed, sold, and serviced the accounting

systems used by Plaintiff Covington from 1997 to the present and represented to and contracted to provide Plaintiff Covington with software designed to prevent the illegal and tortious actions committed by Defendant Due described herein.

Defendant Chas H. Bilz Insurance Agency, Inc. (“Defendant Bilz”) is the insurance agency that marketed, sold, and consulted with Plaintiff Covington and the entity upon whom Plaintiff Covington relied to provide adequate and appropriate Employee Dishonesty Insurance coverage.

Defendants Kentucky Retirement Systems (“Defendant KRS”) and Kentucky County Employees Retirement Systems (“Defendant CERS”) are employee benefit programs into which Defendant Due regularly contributed during his employment with Plaintiff Covington and into which Plaintiff Covington contributed employer matching funds for Defendant Due under the reasonable and appropriate belief that he was a true and faithful employee and entitled to continued employment and the associated benefits thereof.

Plaintiff Covington also brings this action for the purpose of obtaining both Permanent and Temporary Injunctions and Restraining Orders, motions for which have been contemporaneously filed against various Defendants named herein who control, currently hold title to and/or may claim an interest in those illegally acquired assets, or the proceeds thereof, of Defendant Due and/or his successors, executors, administrators, heirs, assigns and successors in interest.

PARTIES AND JURISDICTION

1. Defendant Due is the now-terminated Finance Director of the City of Covington and was employed from January 6, 1999 until August 27, 2013. He resides at 5125 Dana Harvey Lane, Independence, Kentucky, 41051-8146.
2. Defendant Patterson is Defendant Due's spouse and resides with him at 5125 Dana Harvey Lane, Independence, Kentucky, 41051-8146.
3. Defendant Decosimo has been engaged as Plaintiff Covington's accounting firm, and provided a certified audit of Plaintiff Covington's accounts in tax year 2012. Defendant Decosimo is an Ohio Limited Liability Company operating its principal place of business in downtown Cincinnati. Defendant Decosimo does not have a current registration on file with the Secretary of State of the Commonwealth of Kentucky, but has transacted business in the Commonwealth of Kentucky within the meaning of KRS 454.210 in that Defendant Decosimo has:
 - a. Transacted business in this Commonwealth;
 - b. Caused tortious injury by acts and/or omissions within the Commonwealth of Kentucky;
 - c. Caused tortious injury by acts or omissions outside the Commonwealth of Kentucky and has engaged in a persistent course of conduct thereby deriving substantial revenue and benefit from activities within the Commonwealth of Kentucky; and
 - d. Caused injury in this Commonwealth of Kentucky to Covington by its actions and conduct as set forth herein.

By virtue of Defendant Decosimo's actions within the meaning and context of KRS 454.210, it has appointed the Secretary of State of the Commonwealth of Kentucky for purposes of service of process herein.

4. Defendant Von Lehman is a foreign corporation having its registered principal office at 4755 Lake Forest Drive, #100, Cincinnati, Ohio 45242, and appointing as its registered agent Ted J. Funk at 250 Grandview Drive, Ste. 300, Fort Mitchell, Kentucky, 41017.
5. Defendant Fifth Third is a foreign corporation transacting business in the Commonwealth of Kentucky. Its statutory agent is CSC-Lawyers Incorporating Service Company, 421 W. Main St., Frankfort, Kentucky 40601.
6. Defendant US Bank is a national bank conducting business within the Commonwealth of Kentucky using many branch locations. The registered agent for Defendant US Bank is C T Corporation System, 306 W Main St, Suite 512, Frankfort, Kentucky 40601.
7. Defendant KVS Information Systems, Inc. ("Defendant KVS Systems") is a foreign corporation doing business in the Commonwealth of Kentucky, which supplied, warranted, suggested and provided to Plaintiff Covington the accounting system used by Defendant Due to defraud Plaintiff Covington. The registered agent for KVS Systems in the Commonwealth of Kentucky is CSC Lawyers Incorporating Service Company.
8. Defendants Kentucky Retirement Systems and Kentucky County Employees Retirement Systems (individually and/or collectively referred to as "Defendants KRS") are public agencies of the Commonwealth of Kentucky, which, upon

information and belief, are currently holding funds on deposit and owned jointly and/or severally by Defendant Due and/or Defendant Patterson.

9. Defendant Chas H. Bilz Insurance Agency, Inc. (“Defendant Bilz”) is a Kentucky corporation. Defendant Bilz, for valuable consideration received, issued employee dishonesty insurance coverage to Plaintiff Covington on or about September 28, 2006 through policy number 3-940-427-9. The registered agent for Defendant Bilz is Charles M. Berger, 412 Madison Avenue, Covington, Kentucky 41011.
10. Defendant Estate of Virginia Molique, Deceased (“Defendant Estate”) is the estate of Defendant Due’s aunt, Virginia Molique, to whom several instruments owned by Plaintiff Covington were made payable by Defendant Due. On information and belief, Ms. Molique was a Kentucky resident living in Erlanger, Kenton County and died on or about September 20, 2012.
11. Defendants John Doe 1 through 3 and Jane Doe 1 through 3 are the unidentified children of Defendant Due and/or Defendant Patterson.
12. Defendant Unidentified Financial Institutions 1 and 2 are financial institutions holding one or more accounts that contain wrongfully diverted property of Plaintiff Covington, which will be uncovered and identified through ongoing investigation.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

13. Defendant Robert J. Due was employed by Plaintiff Covington from January 6, 1999 until August 27, 2013 as Finance Director. In his capacity as Finance Director, Due, among other responsibilities, administered various bank accounts on behalf of Covington including the account known as the City of Covington

General Fund. Defendant Due was entrusted with the regular, customary, day-to-day management of the monetary resources of Plaintiff Covington and was vested with authority to pay reasonable and appropriate expenses incurred to third parties by Plaintiff Covington.

14. On information and belief, and by admission of Defendant Due to representatives of Plaintiff Covington and/or law enforcement on Friday, August 23, 2013, since 2006, Defendant Due engaged in tortious, dishonest, and malicious theft, fraud, conversion, and embezzlement through schemes and artifices to defraud Plaintiff Covington of at least \$600,000 over which he had been entrusted in his fiduciary capacity as the Finance Director.
15. Since 2006, Defendant Due would routinely cause Plaintiff Covington's accounting software system, which was authored, produced, and marketed by Defendant KVS systems, to produce checks payable to various Defendants that included, but was not limited to himself, Defendant Patterson, Defendant Molique Estate, and others. After producing these false, fraudulent, and erroneous payment checks, Defendant Due would alter the electronic record of the subject instrument within Defendant KVS Systems' computer program to an otherwise valid vendor.
16. Defendant Due would sign these instruments on behalf of Plaintiff Covington with his own signature and use an electronic or physical stamp to affix the signature of Plaintiff Covington's City Manager.
17. Further, Defendant Due would enter the false, fraudulent, and misleading information into Plaintiff Covington's accounting software under the login

- information of other employees without their authorization or permission and not his own login or username. This action was specifically taken to conceal his activities due to the wrongful, malicious, and illegal nature of those actions.
18. Defendant Due intentionally misrepresented and concealed material facts known to Defendant Due with the intention of causing injury to Plaintiff Covington.
 19. Defendant Due took actions that were specifically intended by Defendant Due to cause tangible and intangible injury to Plaintiff Covington and carried out actions both with a flagrant indifference to the rights of Defendant Covington.
 20. The computer software authored, marketed, produced and sold by Defendant KVS Systems to Plaintiff Covington should have prevented Defendant Due from facilitating these schemes and artifices of fraud, theft, conversion, and embezzlement by preventing a single user from logging in at multiple workstations or preventing a user from modifying checking account and payment records after a payment instrument had been produced.
 21. After production of these false, fraudulent, and wrongfully issued instruments, Defendant Due would routinely endorse the instruments on his own behalf, on behalf of his spouse Defendant Patterson, on behalf of the now-deceased Virginia Molique, or endorse them in blank “for deposit only”.
 22. On information and belief, every wrongfully issued payment check was deposited into a checking or savings account maintained by Defendant Due, Defendant Patterson, or decedent Virginia Molique at Defendant Fifth Third Bank.
 23. On information and belief, Defendant Fifth Third Bank never refused or declined to process and accept for deposit these wrongfully, fraudulently, and tortuously

issued payment instruments despite the existence of factual circumstances under which a reasonably prudent banking institution would or should refuse to process or accept in instrument.

24. On information and belief, Defendant U.S. Bank received these instruments for payment from Defendant Fifth Third Bank and despite the existence of factual circumstances under which a reasonably prudent banking institution would demand further investigation or dishonor these fraudulently, falsely, and tortuously issued instruments, Defendant U.S. Bank forwarded payment in satisfaction of the instrument to Defendant Fifth Third, who then credited the joint account or accounts of Defendants Due and Patterson and the account of decedent Molique over which Defendant Due had Power of Attorney.
25. On information and belief, Defendants Due and Patterson used funds from these schemes and artifices of theft, fraud, conversion, and embezzlement for their own personal and pecuniary benefit, for the personal and pecuniary benefit of the John Doe and Jane Doe Defendants, or for the benefit of the deceased Virginia Molique.
26. On information and belief, Defendant Due used funds from this schemes and artifices of theft, fraud, conversion, and embezzlement to fund his retirement account presently on deposit with Defendants Kentucky Retirement System (KRS) and/or Kentucky County Employee Retirement System (CERS) in an amount not yet presently known and Plaintiff Covington made employer contributions to those retirement accounts for Defendant Due's benefit as a result

of his continued employment, which he would not have enjoyed had Plaintiff been aware of his theft, fraud, conversion, and embezzlement since 2006.

27. On information and belief, funds that were directed to the now deceased Virginia Molique remain in her estate and may be subject to recovery by Plaintiff Covington.
28. Plaintiff Covington contracted with and retained Defendant DeCosimo, believing it to be a competent, credible, and diligent accounting and audit firm for the purposes of performing an audit of Plaintiff Covington's financial books and records for the 2012 fiscal year.
29. Defendant DeCosimo failed to uncover Defendant Due's activities of theft, fraud, conversion, and embezzlement during their audit of fiscal year 2012.
30. Plaintiff Covington contracted with and retained Defendant Von Lehman, believing it to be a competent, credible, and diligent accounting and audit firm for the purposes of performing an audit of Plaintiff Covington's financial books and records for the 2010 and 2011 fiscal years.
31. Defendant Von Lehman failed to uncover Defendant Due's activities of theft, fraud, conversion, and embezzlement during their audit of fiscal years 2010 and 2011.
32. Plaintiff Covington retained the services and relied upon the expertise, competence, credibility, and specialized knowledge of Defendant Bilz as an insurance agency to provide sufficient coverage to protect Plaintiff Covington from employee theft, conversion and embezzlement.

33. Defendant Bilz provided Plaintiff Covington, during the relevant time of Defendant Due's theft, fraud, conversion, and embezzlement from 2006 to August 2013, with Employee Dishonesty Coverage having a policy limit of insurance far below that which would be provided by a reasonable and competent insurance agent in light of the annual revenue, expenditures, and budget of Plaintiff Covington.
34. Plaintiff Covington relied upon the specialized knowledge, expertise, and information available to and provided by Defendant Bilz and believed that Defendant Bilz had contracted for and provided Plaintiff Covington with sufficient coverage to protect it in the event of employee fraud, theft, conversion, or embezzlement.
35. Based upon the conduct of Defendant Due described herein, and on additional conduct and activity that will come to light in discovery in this matter, Defendant Due was charged on Friday, August 23, 2013 with Unlawful Taking of More Than \$10,000, First-Degree Unlawful Access to a Computer, First-Degree Official Misconduct and Second-Degree Criminal Possession of a Forged Instrument by law enforcement. Those charges remain pending and were bound over to the Grand Jury on August 26, 2013.
36. On information and belief and based upon forensic accounting review and investigation to present, Defendant Due, Defendant Patterson, the John Doe and Jane Doe Defendants, and Defendant Estate of Virginia Molique jointly and severally profited from Defendant Due's schemes and artifices of theft, fraud, conversion, and embezzlement an amount in excess of \$600,000 during the period

between January 2006 and August 2013. Because of the voluminous nature of the records associated with Defendant Due's schemes and artifices of theft, fraud, conversion and embezzlement, Plaintiff Covington attaches hereto and incorporates by reference Exhibit A, being a summary of the fraudulent instruments known to have been used and negotiated by Defendant Due and/or Defendant Patterson for the benefit of Defendant Due, Defendant Patterson, Defendant Estate of Molique, and the John Doe and Jane Doe Defendants.

37. As recently as August 6 and August 20, 2013, the Due/Patterson Defendants received unauthorized, stolen, fraudulently obtained, and embezzled funds from Plaintiff Covington through Defendant Due's schemes and artifices in a total amount not less than \$17,000.
38. These actions occurred fraudulently and with malice with the specific intention of taking property to which Defendants were not legally entitled.

COUNT I
FRAUDULENT MISREPRESENTATION AND CONCEALMENT
BY DEFENDANTS DUE AND PATTERSON

39. Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
40. Defendants Due and Patterson concealed and misrepresented material facts regarding several instruments drawn of Plaintiff Covington's accounts.
41. Defendants Due and Patterson had a duty to disclose the fraudulent schemes and misrepresented or concealed facts described herein to Plaintiff Covington in order to comply with Kentucky law, such as preventing their acceptance of stolen property.

42. Defendants Due and Patterson knew that misrepresentations, such as but not limited to printing altered payees on Plaintiff Covington's instruments, forging endorsements on Plaintiff Covington's instruments, generating false invoices to conceal other misrepresentations, and making false entries into Plaintiff Covington's accounting system, were false or Defendants Due and Patterson caused such misrepresentations to be made recklessly without knowledge of the truth.
43. Defendants Due and Patterson concealed and misrepresented material facts with the intention of inducing Plaintiff Covington to act or rely upon them.
44. Defendants Due and Patterson acted toward Plaintiff Covington with fraud and malice.
45. As a direct and proximate result of the Defendant Due's and Defendant Patterson's concealment and misrepresentation of material facts, Covington has been damaged in an amount which is in excess of the jurisdictional minimum of this Court.
46. These actions occurred fraudulently and with malice with the specific intention of taking property to which Defendants Due and Patterson were not legally entitled justifying an award of punitive damages against these Defendants.

**COUNT II
CONVERSION**

BY DEFENDANTS DUE AND PATTERSON

47. Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
48. Plaintiff Covington has legal title to the moneys held in its bank accounts.

49. Plaintiff Covington holds the right to possess the property in its bank accounts and held such right at all times relevant to this Complaint.
50. Defendants Due and Patterson exercised dominion and control over the property in a manner that deprived Plaintiff Covington of the right to use and enjoy the property; specifically, Defendants Due and Patterson removed and/or received funds from Plaintiff Covington's accounts without authorization, concealed said removal, and have retained possession thereof or use the same for their personal and pecuniary benefit.
51. Prior to Defendant Due's termination, Plaintiff Covington demanded the return of all stolen property and Defendant Due failed and refused.
52. Defendants Due and Patterson proximately, directly and legally caused Plaintiff Covington's loss of at least \$600,000.00 from its accounts.
53. Defendants Due and Patterson acted toward Plaintiff Covington with fraud and malice.
54. Plaintiff Covington was substantially damaged by the loss of these much-needed funds in an amount exceeding the jurisdictional limits of this Court.
55. These actions occurred fraudulently and with malice with the specific intention of taking property to which Defendants Due and Patterson were not legally entitled justifying an award of punitive damages against these Defendants.

COUNT III
BREACH OF EMPLOYEE DUTY OF LOYALTY/FIDUCIARY DUTY
BY DEFENDANT DUE

56. Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
57. Defendant Due, in his position as Finance Director, was an agent, employee and fiduciary of Plaintiff Covington under Kentucky law.
58. As an agent, employee and fiduciary of Plaintiff Covington, Defendant Due was not permitted to personally profit from the subject matter of that agency, employment relationship or fiduciary relationship under Kentucky Law.
59. As an agent, employee and fiduciary of Plaintiff Covington, Defendant Due was not permitted to work or profit in any manner adverse to the interest of Plaintiff Covington.
60. All profits realized by Defendant Due pursuant to his abuse of his agency relationship with Plaintiff Covington belong to the principal, Plaintiff Covington, and no agreement exists permitting Defendant Due's misappropriation of Plaintiff Covington's funds.
61. Defendant Due, as a financial Director, had a duty to exercise a high degree of good faith toward his employer, Plaintiff Covington, and was not entitled to avail himself of any advantage that his position and access to Plaintiff Covington's accounts gave him to profit at Plaintiff Covington's expense.
62. Defendant Due was hired by Plaintiff Covington to represent and act in Plaintiff Covington's best interests to manage the city's assets prudently, and as such, Defendant Due had a duty to be loyal and faithful to the interest of Plaintiff Covington in respect to the management of Plaintiff Covington's assets.

63. As Finance Director, Defendant Due owed Plaintiff Covington a fiduciary duty - a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence.
64. By concealing Defendants' fraudulent schemes to engage in theft, fraud, conversion and embezzlement of Plaintiff Covington's funds, Defendant Due breached both his duty of loyalty and his fiduciary duty to Plaintiff Covington.
65. Defendant Due acted toward Plaintiff Covington with fraud and malice by breaching his duty of loyalty and fiduciary duty and Defendant Due's actions underpinning such breaches. toward Plaintiff Covington with fraud and malice when
66. As a direct and proximate result of Defendant Due's breaches of the duty of loyalty and fiduciary duty he owed Plaintiff Covington while serving as its Finance Director, Plaintiff Covington has been damaged in an amount which is in excess of the jurisdictional minimum of this Court.
67. These actions occurred fraudulently and with malice with the specific intention of taking property to which Defendant Due was not legally entitled justifying an award of punitive damages against this Defendant.

**COUNT VI
NEGLIGENCE PER SE
BY DEFENDANTS DUE AND PATTERSON**

68. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
69. Defendants Due and Patterson violated one or more Kentucky statutes when they engaged in fraudulent schemes to engage in theft, fraud, conversion and embezzlement of Plaintiff Covington's funds.
70. Defendant Due faces criminal charges including violations of KRS 514.030 (unlawful taking of more than \$10,000), KRS 434.845 (first-degree unlawful access to computer), KRS 522.020 (first-degree official misconduct) and KRS 516.060 (second-degree criminal possession of a forged instrument).
71. As discussed below, Defendant Patterson conspired with Defendant Due to violate these and other statutes.
72. The statutes violated by Defendants Due and Patterson provide for criminal penalties.
73. The actions taken by Defendants Due and Patterson, namely engaging fraudulent schemes to engage in theft, fraud, conversion and embezzlement, are the types of actions that the statutes violated were designed to prevent.
74. Plaintiff Covington is a member of the classes of persons and entities protected by these statutes.
75. As a direct and proximate result of the negligence of Defendants Due and Patterson, Plaintiff Covington was damaged in an amount which is in excess of the jurisdictional minimum of this Court.

COUNT VII
AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY
BY DEFENANT PATTERSON

76. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
77. Defendant Due was in a fiduciary relationship with Plaintiff Covington, and Defendant Patterson was aware of such relationship.
78. By participating in fraudulent schemes to engage in theft, fraud, conversion and embezzlement, Defendant Due breached his fiduciary duty to Plaintiff Covington.
79. Defendant Patterson was aware of Defendant Due's position as Finance Director and his consequent fiduciary relationship with Plaintiff Covington.
80. Defendant Patterson participated in, aided and abetted Defendant Due's violation of his duty as a fiduciary.
81. As a direct and proximate result of Defendant Patterson's actions in aiding and abetting Defendant Due's breach of fiduciary duty, Plaintiff Covington was damaged in an amount which is in excess of the jurisdictional minimum of this Court.
82. These actions occurred fraudulently and with malice with the specific intention of taking property to which Defendant Patterson was not legally entitled justifying an award of punitive damages against this Defendant.

**COUNT VIII
CONSPIRACY
BY DEFENDANTS DUE, PATTERSON, AND THE
JOHN AND JANE DOE DEFENDANTS**

83. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
84. Defendant Due, Defendant Patterson and the John and Jane Doe Defendants engaged in a corrupt and unlawful agreement between two or more persons to do by concert of action several unlawful acts.
85. These Defendants worked together to facilitate schemes and artifices of fraud, theft, conversion, and embezzlement against Plaintiff Covington.
86. Even if Defendant Patterson did not actively participate in the schemes, during the periods when Defendant Due conducted the schemes and artifices of fraud, theft, conversion, and embezzlement against Plaintiff Covington described herein, Defendant Patterson knew or should have known of Defendant Due's actions.
87. Notwithstanding such knowledge, Defendant Patterson continued to accept for her own personal and private use and enjoyment the fruits of those illegal plans and schemes.
88. Defendant Patterson had an affirmative duty and obligation to expose the illegal and unauthorized plans and schemes of Defendant Due.
89. Defendant Patterson's failure and refusal to expose the plans and schemes of Defendant Due constitutes acquiescence, ratification, and participation in the plans and schemes.
90. As a result of Defendant Patterson's participation and ratification of Defendant Due's fraudulent and illegal schemes and plans to divert funds and assets of

Plaintiff Covington for their personal and private use and enjoyment, Plaintiff Covington has been damaged in an amount which is in excess of the jurisdictional minimum of this Court.

91. Even if the Doe Defendants did not actively participate in the schemes, during the periods when Defendant Due conducted the schemes and artifices of fraud, theft, conversion, and embezzlement against Plaintiff Covington described herein, the Doe Defendants knew or should have known of Defendant Due's actions and their resulting benefits therefrom.
92. Notwithstanding such knowledge and after achieving the age of majority, the Doe Defendants continued to accept for their own personal and private use and enjoyment the fruits of those illegal plans and schemes.
93. The Doe Defendants had an affirmative duty and obligation to expose the illegal and unauthorized plans and schemes of Defendant Due.
94. The Doe Defendants' failure and refusal to expose the plans and schemes of Defendant Due constitute their ratification and participation in the plans and schemes.
95. As a result of the Doe Defendants' participation and ratification of Defendant Due's fraudulent and illegal schemes and plans to divert funds and assets of Plaintiff Covington for their personal and private use and enjoyment, Plaintiff Covington has been damaged in an amount which is in excess of the jurisdictional minimum of this Court.

96. As a direct and proximate result of the conspiracy between Defendant Due and other Defendants to this action, Plaintiff Covington was damaged in an amount which is in excess of the jurisdictional minimum of this Court.
97. Plaintiff Covington is entitled to recover all incidental and consequential damages including but not limited to the recoupment of all attorneys' fees and punitive damages against Defendants Due and Patterson.
98. These actions occurred fraudulently and with malice with the specific intention of taking property to which the above named Defendants were not legally entitled justifying an award of punitive damages against them.

COUNT IX
UNJUST ENRICHMENT
BY DEFENDANTS DUE, PATTERSON, AND
THE JOHN AND JANE DOE DEFENDANTS

99. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
100. Defendants' numerous deposits of Plaintiff Covington's public funds into personal and private accounts for the personal and pecuniary benefit of Defendant Due, Defendant Patterson, the John and Jane Doe Defendants or for the benefit of the deceased Virginia Molique and as such constitute benefits conferred upon these Defendants at Plaintiff Covington's expense.
101. The Defendants have appreciated these benefits and retained them over the course of at least seven years during the execution of Defendants' several schemes and artifices of fraud, theft, conversion, and embezzlement against Plaintiff Covington.

102. As a direct and proximate result of the detriment imposed on Plaintiff Covington by Defendants, Plaintiff Covington has been and continues to be damaged in an amount which is in excess of the jurisdictional minimum of this Court, and it is inequitable for Defendants to retain the benefits described herein without payment its value.

**COUNT X
CLAIMS AGAINST THE
ESTATE OF VIRGINIA MOLIQUE**

103. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
104. On or about September 20, 2012, Virginia Molique died a resident of Kenton County, Kentucky.
105. At the time of decedent Molique's death, she was vested with possession and/or title to various assets which were illegally obtained, either all or in part, by Defendant Due's actions of fraud, theft, conversion and embezzlement.
106. As of the filing of this Complaint, it is unknown whether or not an Estate of Virginia Molique ("Estate") has been opened in the Commonwealth of Kentucky or any other jurisdiction.
107. Pursuant to the provisions of KRS 395.040(2), Plaintiff Covington, in its capacity as a creditor of the Estate of Virginia Molique, is currently unable to reopen, initiate or commence the administration of Ms. Molique's estate.
108. Pursuant to the provisions of KRS 396.015, et seq., Plaintiff Covington has a valid and enforceable claim against the Estate which will be prosecuted by Plaintiff Covington at such time as the Estate is opened.

109. Until such time as the Estate is opened in the Kenton District Court, the unknown Administrator of the Estate is made a party to this action.
110. Pursuant to Civil Rule 4.05, Covington requests this Court to appoint a Warning Order Attorney to notify the unknown Administrator of the Estate as to the nature and pendency of this action and to come forward and establish any defense or claim which the Estate would have as it relates to the facts and circumstances which are the subject matter of this action.

COUNT XI
PROFESSIONAL SERVICES MALPRACTICE
BY DEFENDANTS DECOSIMO AND VON LEHMAN

111. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
112. Defendants Decosimo and Von Lehman as accounting and auditing firms are professionals for the purpose of this professional malpractice action.
113. Defendants Decosimo and Von Lehman owed duties to Plaintiff Covington as a result of the professional nature of the services offered, including the duty to provide competent advice and thorough, adequate review to Plaintiff Covington.
114. Plaintiff Covington's damage is not merely speculative as a proximate result of the act or omissions of Defendants Decosimo and Von Lehman.
115. Defendants Decosimo and Von Lehman failed to meet all or some of the duties imposed on them as professional accounting and auditing firms under Kentucky law.
116. By failing to provide competent advice and thorough, adequate review, Defendants Decosimo and Von Lehman also failed to identify the above-described fraudulent schemes perpetrated by other Defendants.

117. Defendant Decosimo and Defendant Von Lehman negligently rendered professional services to Defendant Covington.
118. This action has been filed less than one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by Plaintiff Covington.
119. As a direct and proximate result of Defendants Decosimo and Von Lehman, Plaintiff Covington has been damaged in an amount which is in excess of the jurisdictional minimum of this Court, and such damage is not merely speculative.

COUNT XII
BREACH OF CONTRACT
BY DEFENDANT DECOSIMO

120. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
121. Pursuant to the terms and conditions of an engagement letter with Defendant Covington for the audit of Fiscal Year 2012 ("Decosimo Engagement Letter"), which is attached hereto as Exhibit B, Defendant Decosimo was to provide various accounting and audit services to Defendant Covington for reporting to the public and for the administration of its accounting and financial departments.
122. Defendant Decosimo was to provide services of such quality as to prevent and allow the detection of theft or conversion of Plaintiff Covington's assets through illegal or unauthorized accounting schemes.
123. Defendant Decosimo failed to provide the quality of services that Plaintiff Covington bargained for under the Decosimo Engagement Letter.

124. Defendant Decosimo, in providing such ineffective and ill-executed services, materially and substantially breached its agreement with Plaintiff Covington and failed to adequately perform under the Decosimo Engagement Letter.
125. As a result of Defendant Decosimo's breach of the Decosimo Engagement Letter, Covington has been damaged in an amount in excess of the jurisdictional minimum of this Court.

COUNT XIII
BREACH OF CONTRACT
BY DEFENDANT VON LEHMAN

126. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
127. Pursuant to the terms and conditions of engagement letters for the Fiscal Years 2006 through 2011 with Defendant Covington ("Von Lehman Engagement Letters"), which are attached collectively hereto as Exhibit C, Defendant Von Lehman was to provide various accounting and audit services to Defendant Covington for reporting to the public and for the administration of its accounting and financial departments.
128. Defendant Von Lehman was to provide services of such quality as to prevent and allow the detection of theft or conversion of Plaintiff Covington's assets through illegal or unauthorized accounting schemes.
129. Defendant Von Lehman failed to provide the quality of services that Plaintiff Covington bargained for under the Von Lehman Engagement Letters.
130. Defendant Von Lehman, in providing such ineffective and ill-executed services, materially and substantially breached its agreement with Plaintiff Covington and failed to adequately perform under the Von Lehman Engagement Letters.

131. As a result of Defendant Von Lehman's breach of the Von Lehman Engagement Letters, Plaintiff Covington has been damaged in an amount in excess of the jurisdictional minimum of this Court.

**COUNT XIV
VIOLATIONS OF KRS 355.3-307
BY DEFENDANT FIFTH THIRD BANK**

132. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
133. Defendant Due's accounts are held by Defendant Fifth Third.
134. Defendant Fifth Third is the depository bank as to each of the instruments presented by Defendant Due and/or other Defendants as part of the schemes and artifices of fraud, theft, conversion, and embezzlement described herein.
135. Defendant Fifth Third took several instruments from Defendant Due, a fiduciary, for payment or collection or for value.
136. Defendant Fifth Third has at all relevant times to this action had knowledge of the fiduciary status of Defendant Due in relation to Plaintiff Covington.
137. The instruments and their proceeds belong to Plaintiff Covington on the basis that the transactions of Defendant Due, the fiduciary, were breaches of fiduciary duty.
138. Defendant Fifth Third had notice of Defendant Due's numerous breaches of fiduciary duty, and therefore had notice of the rightful claim of Plaintiff Covington to the instruments and funds involved.
139. All of the instruments in question were drawn on accounts owned by Plaintiff Covington.

140. Some of the instruments in question were made payable to Defendant Due, the fiduciary, in his personal capacity, giving Defendant Fifth Third notice of his wrongful conduct.
141. Defendant Due deposited instruments in question into the same account with Defendant Fifth Third through which he received a direct deposit of his wages from Plaintiff Covington, and for this reason, it was obvious that the instruments in question were not issued by Plaintiff Covington for wages due to Defendant Due.
142. Defendant Fifth Third had notice of Defendant Due's annual salary due to the direct deposit method by which Defendant Due was paid wages by Plaintiff Covington.
143. On information and belief, the amounts for which each instrument in question were made payable exceeded \$8,000, therefore Defendant Fifth Third had notice that the instruments in question were not issued by Plaintiff Covington as reimbursement for ordinary expenses related to his employment.
144. Defendant Fifth Third had notice of Defendant Due's breach of fiduciary duty because Defendant Fifth Third knew or had reason to know that the instruments in question were not related to any valid business purpose of the represented person, Plaintiff Covington.
145. One or more instruments were issued by Defendant Due as fiduciary of Plaintiff Covington to Defendant Due as payee and deposited into accounts other than an account of Defendant Due as fiduciary of the City of Covington or an account of

Plaintiff Covington further providing Defendant Fifth Third with notice of Defendant Due's breach of fiduciary duty.

146. As a direct and proximate result of Defendant Fifth Third's acceptance of several instruments from Defendant Due, a fiduciary, for payment, collection, or value despite knowledge of Defendant Due's breach of fiduciary duty, Plaintiff Covington has been damaged in an amount in excess of the jurisdictional minimum of this Court.

**COUNT XV
VIOLATIONS OF KRS 355.3-403
BY DEFENDANT US BANK**

147. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
148. Plaintiff Covington's accounts are held by Defendant US Bank.
149. Defendant US Bank is drawer bank as to each of the instruments presented by Defendant Due and/or other Defendants as part of the schemes and artifices of fraud, theft, conversion, and embezzlement described herein.
150. Defendant Due placed one or more unauthorized signatures upon instruments presented to US Bank for deposit.
151. Plaintiff Covington has not ratified any of the unauthorized signatures placed by Defendant Due on the instruments described herein.
152. The signature of more than one (1) person was required to constitute the authorized signature of Plaintiff Covington.

153. Defendant Due signed the instruments used by him and others to perpetrate schemes and artifices of fraud, theft, conversion, and embezzlement against Plaintiff Covington without authority to endorse those instruments.
154. In addition to the signature of Defendant Due, the authorized signature of the City Manager was required on all checks properly issued by Plaintiff Covington.
155. The City Manager did not authorize his signature to appear on any of the signed the instruments used by Defendant Due and others to perpetrate schemes and artifices of fraud, theft, conversion, and embezzlement against Plaintiff Covington without authority.
156. Defendant Due both forged the City Manager's signature and acted outside his actual authority by presenting the instruments in question for payment.
157. Although the instruments used by Defendant Due and others to perpetrate schemes and artifices of fraud, theft, conversion, and embezzlement against Plaintiff Covington bore unauthorized signatures, and as such were not properly payable, Defendant US Bank paid such instruments.
158. As a direct and proximate result of Defendant US Bank's violation of KRS 355.3-403, Plaintiff Covington has been damaged in an amount exceeding the jurisdictional limit of this Court.

COUNT XVI
VIOLATIONS OF KRS 355.4-401
BY DEFENDANT US BANK

159. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
160. Plaintiff Covington's accounts are held by Defendant US Bank.

161. Defendant US Bank is the drawer bank as to each of the instruments presented by Defendant Due and/or other Defendants as part of the schemes and artifices of fraud, theft, conversion, and embezzlement described herein.
162. By signing the City Manager's name without authorization, Defendant Due forged the drawer signatures on instruments presented by Defendant Due and/or other Defendants as part of the schemes and artifices of fraud, theft, conversion, and embezzlement described herein.
163. The instruments presented by Defendant Due and/or other Defendants as part of the schemes and artifices of fraud, theft, conversion, and embezzlement described herein were not authorized by Plaintiff Covington and were not accordance with agreements between Plaintiff Covington and Defendant US Bank; as such, the instruments were not properly payable.
164. Defendant US Bank paid on the instruments presented by Defendant Due and/or other Defendants as part of the schemes and artifices of fraud, theft, conversion, and embezzlement described herein over the forged signatures of the City Manager.
165. Defendant US Bank paid on numerous instruments presented by Defendant Due that were not properly payable under Kentucky law.
166. As a direct and proximate result of Defendant US Bank's wrongful payment of instruments that were not properly payable, Plaintiff Covington was damaged in an amount exceeding the jurisdictional limit of this Court.

**COUNT XVII
BREACH OF BANKING CONTRACT
BY DEFENDANT US BANK**

167. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
168. There is a banking contract between Plaintiff Covington and Defendant US Bank that has been in effect since on or about March 12, 2003. Both Plaintiff and Defendant US Bank are in possession of a copy of this Contract and because of the sensitive and proprietary nature of that document, Plaintiff has not attached a copy of the Contract hereto.
169. Plaintiff Covington performed all duties and obligations required of Plaintiff Covington under the Contract.
170. Defendant US Bank breached the Contract by not performing its duties and obligations thereunder, such as by failing to investigate or decline any of several instruments that were not properly payable to Defendant Due.
171. As a direct and proximate result of Defendant US Bank's breach of the banking or deposit agreement, Plaintiff Covington was damaged in an amount exceeding the jurisdictional limit of this Court.

**COUNT XVIII
NEGLIGENCE
BY DEFENDANT BILZ**

172. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
173. Defendant Bilz is an insurance agency that has sold policies of insurance to Plaintiff Covington since at least 2006 and was relied upon by Plaintiff Covington for the selection, sale, and servicing of appropriate insurance to protect against

losses, including but not limited to occurrences of Employee Dishonest, Theft, Conversion, and Embezzlement like ones described herein.

174. Defendant Bilz know or should have known that Plaintiff Covington was relying upon its specialized knowledge, expertise, and experience in the selection and servicing of sufficient insurance to protect against occurrences of Employee Dishonesty, Theft, Conversion, and Embezzlement like ones described herein.
175. Defendant Bilz voluntarily accepted the duty to provide sufficient insurance coverage to protect Plaintiff Covington for occurrences of Employee Dishonesty, Theft, Conversion, and Embezzlement like ones described herein.
176. Defendant Bilz breached that duty to Plaintiff Covington by failing to provide sufficient insurance coverage to protect Plaintiff Covington for occurrences of Employee Dishonesty, Theft, Conversion, and Embezzlement like ones described herein.
177. As a direct and proximate result of that breach, Plaintiff Covington has been damaged in an amount exceeding the jurisdictional limit of this Court.

COUNT XIX
ADDITIONAL CLAIMS AS TO DEFENDANT FIFTH THIRD, DEFENDANT
UNKNOWN FINANCIAL INSTITUTION 1, DEFENDANT UNKNOWN
FINANCIAL INSTITUTION 2, AND KRS

178. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
179. Throughout Defendant Due's illegal and unauthorized schemes and plans to divert funds and assets from Plaintiff Covington for his personal and private use and enjoyment, Defendant Due has acquired title to various assets including, but not limited to, the following:

- a. A 2005 Honda Civic VIN Number 1HGEM22145L079921;
 - b. A 2012 Mazda 3I Sedan, VIN Number JM1BL1UF5C1527633;
 - c. A 2009 Toyota RAV4, VIN Number JTMBF33V595001693;
 - d. Real property located at 5125 Dana Harvey Lane, Independence, KY 41051;
 - e. Funds on deposit with Kentucky Retirement Systems;
 - f. Funds on deposit with Kentucky County Employee Retirement Systems;
 - g. Funds on deposit with Defendant Fifth Third in Defendant Due's personal account or joint account with Defendant Patterson; and
 - h. Funds on deposit with unknown financial institutions that have yet to be uncovered.
180. Upon information and belief, the Defendants herein, Defendant Fifth Third, Defendant Unknown Financial Institution 1, Defendant Unknown Financial Institution 2, and Defendant KRS, currently hold assets for the benefit of Defendant Due, Defendant Patterson and/or the Doe Defendants.
181. Upon information and belief the assets were substantially or entirely obtained and/or acquired with illegally obtained assets and funds all of which rightfully belong to Plaintiff Covington.
182. The aforementioned Defendants, Defendant Fifth Third, Defendant Unknown Financial Institution 1, Defendant Unknown Financial Institution 2, and Defendant KRS, are made parties to this action for the purpose of establishing and determining the rightful ownership into those assets held by them in the name or benefit of Defendant Due, Defendant Patterson, and/or the Doe Defendants.

**COUNT XX
NEGLIGENCE
BY DEFENDANT KVS SYSTEMS**

183. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
184. Beginning as early as 1997 and each year thereafter, Defendant KVS Systems and Plaintiff Covington entered into a contract whereby Defendant KVS Systems was to provide various computer hardware and software systems for use in Plaintiff Covington's accounting and financial department. Pursuant to the terms of that Contract, Defendant KVS Systems provided, among other things, financial software modules for Plaintiff Covington's finance department, including modules to deal with accounts receivable, cash receipts, accounts payable, purchasing and inventory, account management, occupational license administration, land management, and report writing. Defendant KVS Systems provided training, maintenance, and on-going advice concerning all of these functions, among others.
185. Defendant KVS Systems, in providing and performing the afore-described goods and services for and on behalf of Covington did so in a negligent manner in that Defendant KVS Systems:
- a. Provided a computer system for use by Plaintiff Covington and its representatives in the administration of its financial and accounting affairs which facilitated and allowed Defendant Due to initiate, conduct and perpetuate his illegal and unauthorized plans and schemes of diverting Plaintiff Covington's assets for Defendant Due's personal and private use;
 - b. Provided a computer accounting system which failed to provide for adequate protection and safeguards which would have prevented Defendant Due from initiating,

conducting and perpetuating his illegal and unauthorized schemes of diverting Plaintiff Covington's assets for Defendant Due' personal and private use;

- c. Failed to provide adequate training and instruction for Plaintiff Covington and its agents and representatives in the use of its computer system which would have allowed Plaintiff Covington to detect and/or prevent Defendant Due from initiating, operating and perpetuating his illegal and unauthorized schemes.

186. As a direct and proximate result of the negligence of KVS Systems in providing computer goods, software and services, Plaintiff Covington has been damaged in an amount which is in excess of the jurisdictional minimum of this Court.

**COUNT XXI
BREACH OF WARRANTY
BY DEFENDANT KVS SYSTEMS**

187. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
188. Defendant KVS Systems' sale of goods and services to Plaintiff Covington carried various statutory warranties as codified in KRS Chapter 355 including but not limited to warranties of fitness for a particular purpose as contained in KRS 355.2-315.
189. Defendant KVS Systems knew of Plaintiff Covington's particular purpose, special needs and requirements relative to the sale of goods and services.
190. Defendant KVS Systems knew or should have known that Plaintiff Covington was relying on Defendant KVS Systems' skill and judgment in selecting and furnishing suitable goods for Plaintiff Covington's use.
191. Defendant KVS Systems, in the sale of goods and services to Plaintiff Covington, breached its warranty of fitness for a particular purpose as required by KRS 355.2-315.

192. As a direct and proximate result of Defendant KVS Systems' breach of warranties, including but not limited to fitness for a particular purpose, Plaintiff Covington has been damaged in an amount in excess of the jurisdictional minimum of this Court.
193. Plaintiff Covington is entitled to recover of Defendant KVS Systems as a result of the breach of warranty, all incidental and consequential damages including the payment of reasonable attorney's fees incurred by Plaintiff Covington in the prosecution of this claim.

COUNT XXII
BREACH OF CONTRACT
BY DEFENDANT KVS SYSTEMS

194. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
195. Pursuant to the terms and conditions of multiple Contracts with Plaintiff Covington from 1997 to the present, Defendant KVS Systems was to provide and service various computer goods and services for use by Plaintiff Covington in the administration of its accounting and financial department.
196. Defendant KVS Systems was to provide goods and services of such quality and design as to prevent and allow the detection of theft or conversion of Plaintiff Covington's assets through illegal or unauthorized accounting schemes.
197. The computer goods and services provided by Defendant KVS Systems to Covington were of such a defective quality and condition that, in fact, those computer goods and services allowed Defendant Due to initiate and perpetuate his illegal and unauthorized schemes and plans of diverting Plaintiff Covington's assets to Defendant Due's personal and private use.

198. Defendant KVS Systems, in providing such defective goods and services, materially and substantially breached its contract with Plaintiff Covington.
199. As a result of Defendant KVS Systems' breach of Contract, Plaintiff Covington has been damaged in an amount in excess of the jurisdictional minimum of this Court.

COUNT XXIII
REQUEST FOR RESTRAINING ORDER
AGAINST DEFENDANTS DUE, PATTERSON, THE
JOHN DOE AND JANE DOE DEFENDANTS, DEFENDANT
FIFTH THIRD, AND DEFENDANTS KRS

200. Plaintiff Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
201. Plaintiff Covington, by and through City Manager Larry Klein, and pursuant to Civil Rule 65.01. et seq, respectfully requests of this Court for a Restraining Order restraining and prohibiting the Defendant Due, Defendant Patterson, the Doe Defendants, Defendant Fifth Third, and Kentucky Retirement System and Defendant CERS from engaging in the following conduct:
- a. From engaging in any activity or other actions that would affect the availability, marketability or value of those assets identified in Paragraph 179 herein, and any and all other assets in which Robert J. Due owns or holds any equitable or legal interest. Prohibited activities shall include but not be limited to the selling, assigning, pledging, distributing, encumbering, wasting, secreting, depreciating, damaging or in any way diminishing the value of all or any part of those identified assets in Paragraph 179 herein, whether such interest of Robert J. Due is legal, equitable, inchoate, contingent, disputed, or otherwise.
 - b. The defendants herein are further required to maintain the present condition of the property held by them including the timely payments of all mortgages, insurance, utilities, taxes and assessments until further Orders of this Court.

202. In support of Covington's request for Restraining Order, City Manager Larry

Klein states as follows:

- a. Klein is currently the duly appointed City Manager of the City of Covington, Kentucky.
- b. Klein states that he has read the Complaint with Jury Demand herein and upon information and belief and to the best of his knowledge, all of the statements and allegations contained therein are true and correct.
- c. Upon information and belief, Klein believes that Robert J. Due holds title to all or a portion of the assets identified in Paragraph 179 herein.
- d. Upon information and belief, Klein further understands that all or a substantial portion of the assets identified in Paragraphs 179 were purchased with funds and monies illegally converted and/or embezzled from the City Covington by Robert J. Due.
- e. The City Covington has a financial interest in these assets which should be protected.

203. If the named defendants herein are not restrained or prohibited from transferring or otherwise disposing of all or any interest in the assets identified in Paragraph 179, Covington would suffer immediate and irreparable injury for which it would have no adequate remedy at law. Furthermore, the rights and interests which the City of Covington has in the assets identified in Paragraph 179 would be substantially, materially and irreparably damaged unless the defendants herein are restrained and prohibited of disposing of those assets until such time as this Court is able to reasonably and equitably determine and adjudicate the interest of the parties hereto in and into those assets.

COUNT XXIV
CLAIMS FOR INJUNCTIVE RELIEF AGAINST
DEFENDANTS DUE, PATTERSON, AND THE
JOHN DOE AND JANE DOE DEFENDANTS

204. Covington incorporates herein by reference each and every statement and allegation set forth herein and not specifically inconsistent herewith.
205. Defendants Due, Patterson, and the John Doe, and Jane Doe Defendants must be immediately enjoined from alienating any physical assets or liquidating any securities, universal life, whole life, or other economic assets that may later be able to be executed upon by Plaintiff Covington and as described in Paragraph 179 above.
206. If Injunctive Relief is not ordered by this Court as requested against the above-named defendants, Plaintiff Covington would suffer irreparable and immediate injury for which it would have no adequate remedy at law.

WHEREFORE, PLAINTIFF CITY OF COVINGTON, KENTUCKY
DEMANDS THE FOLLOWING:

- A. For trial by jury on all issues so triable.
- B. For judgment against Defendant Robert James Due for all damages incurred by Plaintiff Covington including actual damages; consequential damages; incidental damages; attorneys fees and punitive damages all of which is in an amount in excess of the jurisdictional minimum of this Court.
- C. For judgment against Defendant Janet H. Patterson for all damages incurred by Plaintiff Covington including actual damages; consequential damages;

incidental damages; attorneys fees and punitive damages all of which is in an amount in excess of the jurisdictional minimum of this Court.

D. For judgment against Defendants Jane Doe 1 through 3 and John Doe 1 through 3 for all damages incurred by Plaintiff Covington including actual damages; consequential damages; incidental damages; attorneys fees and punitive damages all of which is in an amount in excess of the jurisdictional minimum of this Court.

E. For judgment against Defendants Jane Doe 1 through 3 and John Doe 1 through 3 for all damages incurred by Plaintiff Covington including actual damages; consequential damages; incidental damages; attorney fees and punitive damages all of which is in an amount in excess of the jurisdictional minimum of this Court.

F. For judgment against Defendants Due, Patterson, Jane Doe 1 through 3, and John Doe 1 through 3 for punitive damages due to the fraudulent and malicious nature of their actions in fraudulently, willingly, and tortuously converting and profiting from Defendant Due's fraud, theft, conversion and embezzlement of property to which Defendants were not legally entitled.

G. For judgment against Defendant Estate of Virginia Molique for all damages incurred by Covington including incidental and consequential damages; profits; attorneys fees and punitive damages all of which is in excess of the jurisdictional minimum of this Court;

H. For judgment against Defendant US Bank for all actual, incidental and consequential damages and for attorney fees all which are in excess of the jurisdictional minimum of this Court.

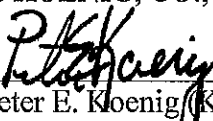
I. For judgment against Defendant KVS Systems for all actual, incidental and consequential damages and for attorney fees all of which are in excess of the jurisdictional minimum of this Court.

J. That the defendants Defendant Fifth Third, Defendant Unknown Financial Institution 1, Defendant Unknown Financial Institution 2, and KRS be ordered to come forward and establish any interest which they may have in and to the assets identified herein.

K. For a restraining order and injunction pursuant to the provisions of Civil Rule 65.01 et seq. as to Defendant Due, Defendant Patterson, and the John Doe Defendants, restraining, prohibiting and enjoining said Defendants from all activities set forth in Paragraph 205 above.

Respectfully submitted,

BUECHNER, HAFFER, MEYERS
& KOENIG, CO., L.P.A.



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*Trial Counsel for Plaintiff
City of Covington, Kentucky*

Of Counsel :

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Facsimile: (859) 292-2310
Email: fwarnock@covingtonky.gov

JURY DEMAND

Plaintiff City of Covington, Kentucky demands trial by jury on all issues so triable.

Respectfully submitted,

BUECHNER, HAFFER, MEYERS
& KOENIG, CO., L.P.A.



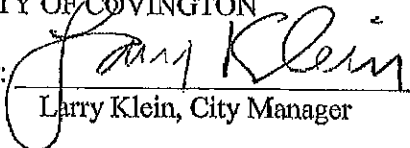
Peter E. Koenig (KBA #87267)

VERIFICATION

Comes now Larry Klein, the duly authorized City Manager of the City of Covington, Kentucky, and states that he has read the foregoing Complaint and that the statements contained therein are true and correct to the best of his knowledge, information, and belief.

CITY OF COVINGTON

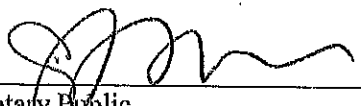
By:


Larry Klein, City Manager

COMMONWEALTH OF KENTUCKY

COUNTY OF KENTON

Subscribed and sworn to before me Larry Klein, City Manager of the City of Covington, Kentucky, for and on behalf of the City of Covington, Kentucky on this the 30 day of August, 2013.


Notary Public

My Commission Expires: 3/16/14

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